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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 10/091,369 | 03/05/2002 | Kenichi Murai | 15115.020001 | 7298 |
| 22511 | 7590 | 02/15/2006 | EXAMINER | |
| OSHA LIANG L.L.P. 1221 MCKINNEY STREET SUITE 2800 HOUSTON, TX 77010 | | | MCCARTHY, CHRISTOPHER S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2113 | |

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|-------------------------------------|--|
| Office Action Summary | Application No. 10/091,369 | Applicant(s) MURAI ET AL. | |
| | Examiner Christopher S. McCarthy | Art Unit 2113 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☒ Claim(s) 2 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Forbes et al. U.S. Patent 6,728,896.

As per claim 1, Forbes teaches a program update for updating an operation program on which an application program is executed, comprising: storage means for separately storing at least two operation programs (column 7, line 56 – column 8, line 35; figure 3); activating means for selecting and activating one of operation programs, wherein the selected operation program configures a setting required for execution of the application program (column 7, lines 29-39; column 10, lines 16-23, 40-46); first failure detecting means for detecting a failure in activation of the selected operation program (column 3, lines 4-12; column 9, lines 1-14); second failure detecting means for detecting a failure in activation of the application program executed on the selected operation program, wherein the application program requires the setting configured by the selected operation program for the execution thereof (column 9, lines 12-18; column 7, lines 26-28); a recovering application which resets the setting configured by the selected operation program (column 9, lines 15-18); wherein, in the case when the first failure detecting means any

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failure in the activation of the selected operation program, the activating means selects another operation program to switch over from the selected operation program (column 8, lines 21-35); and in the case when the second failure detecting means detects any failure in the activation of the application program, the recovering application resets the setting configured by the selected operation program (column 9, lines 15-18).

As per claim 3, Forbes teaches a method for updating an operation program on which an application program is executed, comprising operating a first operation program, stored in a first storage area, to execute the application program, wherein the application program uses a first setting configured by the first operation program (figure 3, column 7, line 40 – column 8, line 35); storing a second operation program in a second storage area formed separately from the first storage area (figure 3); activating the second operation program to switch over from the first operation program, wherein a second setting used for execution of the application program is configured by the second operation program (column 7, lines 40 – column 8, line 35); detecting a failure in activation of the second operation program (column 9, lines 1-14); in the case when a failure is detected in the activation of the second operation program, activating the first operation program to switch over from the second operation program (column 9, lines 1-14); in the case when a failure is detected in the activation of the application program, activating a recovering application which resets a setting used for execution of the application program (column 9, lines 15-18); and resetting the second setting to the first setting (column 11, lines 35-51; column 9, lines 1-14).

Allowable Subject Matter

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3. Claims 2 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. McCarthy whose telephone number is (571)272-3651. The examiner can normally be reached on M-F, 9 - 5:30.

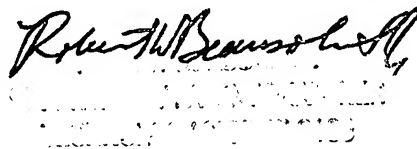
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

csm

February 7, 2006



Robert W. Beausoliel